

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
LARRY D. VAUGHT, JUDGE

DIVISION II

CA06-76

May 16, 2007

GLENN MISENHEIMER
APPELLANT

AN APPEAL FROM STONE COUNTY
CIRCUIT COURT
[NO. CIV2002-37-4]

v.

BARRY PITTS AND THERESA PITTS
APPELLEES

HONORABLE TIM WEAVER,
CIRCUIT JUDGE

DISMISSED

Appellant Glenn Misenheimer appeals from a directed verdict in favor of appellees Barry and Theresa Pitts. We dismiss the appeal because all claims against all parties have not been resolved.

In 2002, appellant sued appellees and several other defendants for various torts in connection with the shooting of his hogs and cattle. After summary judgment was entered in favor of some of the defendants, appellant filed an appeal in this court, which we dismissed for lack of a final order. *Misenheimer v. Jason*, CA04-562 (June 29, 2005) (not designated for publication). Appellant returned to circuit court and non-suited his case against one alleged tortfeasor, leaving appellees and possibly one other person as the remaining defendants, with trespass, conversion, and assault as the remaining claims.

On November 14, 2005, appellant tried his conversion and assault claims against appellees. Appellees obtained a directed verdict, and judgment was entered accordingly. That is the order from which this appeal is brought.

Arkansas Rule of Civil Procedure 54(b) provides that, when more than one claim for relief is presented in an action or when multiple parties are involved, an order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final, appealable order. *Brasfield v. Murray*, 96 Ark. App. 207, ___ S.W.3d ___ (2006). In particular, when an order adjudicates fewer than all counts of a multi-count complaint, it is not a final order, and the appeal must be dismissed. *See Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *Brasfield, supra*; *Strack v. Cap. Servs. Group*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). Appellant's claims for conversion and assault were concluded by a directed verdict, but the record does not indicate that appellant's trespass count has been dismissed or otherwise resolved. That count therefore remains pending.

Additionally, appellant, in an amended complaint, added allegations against Sybil McIntire, although he did not list her in the complaint's caption. It is not clear whether Ms. McIntire was served with a summons—she never appeared in the action, and appellant does not mention her in this appeal. Nevertheless, her being named as a defendant requires that she be dismissed to achieve finality. *See Wilson v. Weiss*, ___ Ark. ___, ___ S.W.3d ___ (Dec. 14, 2006).

Based on the above, we dismiss this appeal for lack of a final order. The dismissal is without prejudice to re-file upon entry of a final order or an appropriate Rule 54(b) certification. *See Ark. R. Civ. P. 54(b)(1)* (2006).

Dismissed without prejudice.

MARSHALL and HEFFLEY, JJ., agree.